RECEIVED
FEB 9 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 81-5919

THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

EDWARD HAROLD SCHAD, JR., Petitioner,

v.

THE STATE OF ARIZONA, Respondent,

ON WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF ARIZONA

SUPPLEMENTAL BRIEF ON PETITION FOR WRIT OF CERTIORARI

LAW OFFICES OF CHARLES ANTHONY SHAW

By Charles Anthony Shaw
Charles Anthony Shaw
122 North Cortez, Suite 300
Prescott, Arizona 86301
Telephone: (602) 778-0801
Attorney for Petitioner

Petitioner brings forth to the Court's attention the recent Opinion of this Court in Eddings v. Oklahoma, United States Supreme Court No. 80-5727, decided January 19, 1982. The Opinion of this Court in this case is relevant to questions three and four of the Petitioner's Questions for Review as stated in his Petition for Writ of Certiorari in this case.

In Eddings the petitioner was convicted of first-degree murder in an Oklahoma trial court and sentenced to death. The Oklahoma death penalty statute provided that in a sentencing proceeding evidence may be presented as to "any mitigating circumstances" or as to any of certain enumerated aggravating circumstances. At the sentencing hearing, the state alleged certain of the enumerated aggravating circumstances, and the petitioner, in mitigation presented substantial evidence of a turbulent family history, of beatings by a harsh father, and of serious emotional disturbance. In imposing the death sentence, the trial judge found that the state had proved each of the alleged aggravating circumstances, but the trial judge refused, as a matter of law, to consider in mitigation the circumstances of petitioner's unhappy upbringing and emotional disturbance, and found that the only mitigating circumstance was petitioner's youth, which circumstance was held to be insufficient to outweigh the aggravating circumstances.

Citing Lockett v. Ohio, 438 U.S. 586, 606 (1978), this Court in Eddings recognized the requirement that capital punishment be imposed fairly and with reasonable consistency or not at all, and that a consistency produced by ignoring individual differences is a false consistency. This Court further held that a sentencer may not refuse to consider, as a matter of law, any relevant mitigating evidence, and that the sentencer and reviewing court may determine the weight to be given relevant mitigating evidence, but may not give it no

weight by excluding it from their consideration.

In the case at bar, the trial court in its Special Verdict gave no weight whatsoever to the mitigating circumstance of doubt of guilt. Petitioner contends strenuously here that the trial court should have given some weight to this circumstance because it certainly was relevant. The Arizona Supreme Court refused to consider this relevant mitigating circumstance and thereby refused to give it any weight because there would have been sufficient evidence to sustain the verdict.

Neither the trial court in its Special Verdict nor the Arizona Supreme Court in its Opinion in the case at bar made any mention of the mitigating circumstance that the aggravating factor should have been given less weight because it was not very aggravating. In view of the holding in Eddings, this evidence should also have been considered by the sentencer and the Arizona Supreme Court.

RESPECTFULLY SUBMITTED this 5TH day of February, 1982.

LAW OFFICES OF CHARLES ANTHONY SHAW

By Charles Anthony Shaw

Charles Anthony Shaw
122 North Cortez, Suite 300
Prescott, Arizona 86301
Attorney for Petitioner